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**Ray Finch**

# **Snapshot of a War Crime: The Case of Russian Colonel, Yuri Budanov**

*Inter arma silent leges (In time of war, the laws are silent) Cicero*

<sup>1</sup> If laws are silent during war, then they are doubly mute in the grey area of counter-terrorism and counter-insurgency operations. While Cicero's aphorism above applies to all wars, the ferocity of the fighting in Chechnya during the past 15 years deserves a special caveat. Simply put, the conflict in Chechnya (among both Russian uniformed personnel and Chechen insurgents) has had more in common with armed banditry than with war (in the western sense of the word). Some in the West tend to believe that there is a clear understanding regarding the relationship between words like "state, military, laws of war, enemy, and civilian populace". The standard model has the civilian leadership of the state (providing both the resources and legitimacy) ordering the military to accomplish a specific mission (i.e. defend territorial integrity). In return, the military, using the resources and legitimacy provided by the state, carries out the mission, all the while trying to minimize the casualties among the civilian population. In such a model, when a soldier steps out of line and commits a crime against the civilian populace, he is punished according to military laws. This model, however, only partially applies to what has occurred in and around Chechnya since 1993. Like many counter-insurgency operations throughout history, command and control have often been lacking; the guiding principles have sometimes been defined by retribution, arbitrary violence, and personal gain; and as long as commanders or warlords achieved the objective of killing the enemy, making money, or gaining influence, the means were rarely ever questioned.

<sup>2</sup> On 27 March 2000, Russian Army Colonel, Yuri Budanov, abducted, allegedly raped, and murdered an 18-year old Chechen woman, Elza Kungayeva<sup>1</sup>. Colonel Budanov claimed that Kungayeva fit the description of a female sniper, and during his interrogation of the suspected terrorist, strangled her in a fit of rage. Colonel Budanov was in Chechnya as part of a Russian military campaign to crush a Chechen separatist insurgency. Arrested shortly thereafter, the accused went through a series of trials and psychiatric tests over the course of three years, where he was first found to be mentally incompetent, and hence, not guilty. This ruling was overturned by a higher court, and in July 2003, Colonel Budanov was ultimately found sane and convicted to ten years in prison. This paper will examine the background to this crime (to include a brief history of Russian-Chechen relations), the crime itself, the subsequent trials, the political and social factors which influenced the verdict, and some related philosophical questions dealing with the nature of war and crime<sup>2</sup>. The thesis is twofold: one, to illustrate the problems involved in applying the laws of war to a counter-terrorist operation; and two, to demonstrate the dangers which the state must confront when offering up a 'scapegoat', particularly in a multi-ethnic country like Russia<sup>3</sup>.

## **Background to the Incident**

<sup>3</sup> Since the 17<sup>th</sup> century, Russia and the Chechen people have engaged in an on-again, off-again struggle to determine the question of Chechen sovereignty. While officially incorporated into the Russian empire in the mid-18<sup>th</sup> century, the Chechen people have never given up their desire for independence, nor their undying hatred toward their Russian conquerors. From the Chechen perspective, there have been more than sufficient grounds for enmity. Whether it was Russian General Yermolov, who in 1816 remarked that the "only good Chechen is a dead Chechen", or Stalin's decision during WWII to deport the entire Chechen population to Siberia, the Russian government has used the most extreme measures to subdue the hearts and minds of the Chechen people<sup>4</sup>. Alongside the vicious grievances stemming from the most recent wars (1994-1996, and 1999-2008), the painful memories from previous centuries have been neither forgotten nor forgiven.

4 The most recent attempt at Chechen independence began with the collapse of the USSR in 1991. As each of the major republics of the Soviet Union proclaimed their independence from Moscow, some Chechen leaders reasoned that they too deserved to be free of their erstwhile Kremlin masters. Under their newly-elected president (and former Soviet Air Force general) Dzhokar Dudayev, the Chechens declared independence in October 1991, taking advantage of Moscow's political confusion and weakness, when both the borders and legitimacy of the new Russian state appeared to be in flux.

5 Using a mixture of administrative and quasi-criminal methods, the Chechens were able to assume control over large remnants of the Soviet (now-Russian) police and military forces in the region. While entertaining the possibility of a greater degree of autonomy, the Yeltsin government was unwilling to consider full Chechen independence, and began to use both overt and covert methods to undermine the Chechen independence cause.

6 The rationale for the Yeltsin government to finally intervene militarily and crush Chechnya's move toward independence in December 1994 was both complex and poorly planned. Briefly, by mid-1994, the Yeltsin government was reeling from a string of domestic political and economic setbacks. In a showdown with the recalcitrant Russian parliament in October 1993, Yeltsin had been forced to use tanks to convince his political opponents that the executive branch was more powerful and legitimate than the left-leaning legislative body (Duma). Russia's transition from a centralized, command-driven economy to something resembling a free-market/capitalist model had become much more painful than anticipated. Inflation had consumed the meager savings among most Russians. Salaries for government employees (still the bulk of the population, to include military personnel) were slow to be paid and could not keep up with inflation. Crime and corruption were both rampant - thanks to a relatively free press - and well-publicized. Social protest was in the air, as evidenced by the strong showing of the Communist Party and the ultra-nationalist parties in the December, 1993 parliamentary elections. Part of the rationale to crush the separatist movement in Chechnya centered on the specious belief that a successful war against a popular enemy would help to deflect domestic criticism.

7 Having failed to topple the Dudayev government either by diplomatic coercion or special forces-type operation, and advised by some of his close advisors that restoring federal authority would be relatively cost-free, President Yeltsin declared a state of emergency in Chechnya in December 1994, and ordered the Russian military to crush the separatist forces<sup>5</sup>. However, despite overwhelming superiority in firepower and logistics, the untrained, ill-equipped, and poorly led Russian forces proved unable to pacify the determined Chechen insurgency. The reputation of the Russian military was further damaged by a series of well-publicized raids and hostage-taking incidents conducted by the Chechen rebels during this phase of the war. The Chechen insurgent skills and ruthlessness compared to the sloppy, uncoordinated, and brutal Russian response did little to mobilize wider Russian support for this conflict<sup>6</sup>.

8 The lack of an overall, effective strategy to deal with the separatists, combined with poorly-trained and equipped military, continued to erode Russian morale. By the spring of 1996, with presidential elections looming on the horizon, the Yeltsin government began to actively seek a diplomatic solution. Much of the Russian military leadership was against such overtures, and even before negotiations began with Chechen leaders in July 1996, there were already military leaders talking about a "stab in the back syndrome". Just who was stabbing whom was not altogether clear<sup>7</sup>. In his first experience fighting the Chechens, a junior military leader like Budanov must have felt betrayed by a system that had ordered the military to fight, then failed to provide the necessary resources or resolve to accomplish the mission. Some hawkish Russian officers would later maintain that this same system then signed a ceasefire when victory was within sight. It wasn't long, however, before those like Budanov would have a chance to redeem themselves.

9 Having largely destroyed the political, economic, and social infrastructure of the Chechen region during the preceding two years, it is not surprising that the three years of quasi-independence (1996-1999) were largely categorized by criminality, chaos, and growing radicalization among various Chechen warlords. Reconstruction funds promised by Moscow

were often stolen before they ever reached the weakened newly elected Maskhadov government. Illicit arms sales, crime and kidnapping flourished in war-torn Chechnya. The situation grew critical in late summer 1999, when Chechen fighters moved to gain control of areas within Dagestan, to purportedly widen radical Islamic influence in the Northern Caucasus. This aggression was combined with a series of mysterious explosions in Moscow and other Russian cities (blamed on the Chechens), and forced the Russian leadership (now headed by the new Prime Minister, Vladimir Putin) to re-establish federal control over Chechnya<sup>8</sup>. Suffice it to say, that despite the tough rhetoric of the new Prime Minister, the Russian military was hardly better prepared to fight a new counter-insurgency operation in the late autumn of 1999 than it had been five years earlier<sup>9</sup>.

10 If the hallmarks of 1994-1996 Russian military campaign in Chechnya were ineptitude, lack of preparation, and brutality, then the distinguishing characteristics of the latter phase were ruthlessness, massive bombardment, a media vacuum, and the employment of local quislings. The promise of relatively unknown Prime Minister Putin, “to wipe out the terrorists in the shithouse”, not only set the tone for Russia’s return to crush the Chechen insurgents, but also propelled the relatively unknown Putin into national prominence<sup>10</sup>.

11 By January 2000, the Russian military had largely reestablished (on paper, at least) control over the greater part of Chechnya. Many Chechen fighters, however, had escaped unharmed into the mountainous region in the south, from which they continued to harass Russian forces. The Russians continued to rely on massive bombardment and filtration camps to eliminate insurgent forces. Prior to initiating air and artillery barrages on Chechen villages and towns, the Russian forces would sometimes warn the locals to evacuate, and then try to take into custody any possible insurgents. Identifying just who was an “insurgent” was difficult to say the least.

12 As the commander of the 160<sup>th</sup> Tank Regiment, Colonel Budanov’s unit purportedly supported infantry as they secured Chechen villages and towns. This support often entailed indiscriminate artillery fire until local Chechen leaders complied with Russian demands. Again, sometimes these federal demands often had less to do with capturing insurgents as with sheer extortion. In late February 2000, Colonel Budanov’s armor regiment was located south of Grozny, near the village of Tangi Chu. The stated mission was to serve as a blocking force to prevent insurgents from regrouping in cleared areas and to prevent them from any re-supply from areas near Grozny. The war at this point was not going particularly well for the Russian forces, as the miserable cold and wet weather hindered operations. Despite the massive advantage in firepower, Russian losses continued to mount. Budanov’s unit had lost nine men (mostly to sniper fire) in the two months preceding his crime<sup>11</sup>.

## The Crime

13 When exactly the drinking started is a matter of some conjecture, but by mid- afternoon on 26 March 2000, Colonel Budanov was under the influence. Some reports claim that he was celebrating the second birthday of his daughter, while others suggest that he was toasting Putin’s presidential victory<sup>12</sup>. Sometime late that afternoon, Colonel Budanov and LTC Ivan Fedorov, the regimental chief of staff (who was also celebrating), decided to stage a firing competition with some of the tank crews. The crews were instructed to engage a possible target near or above the village of Tangi Chu. When one of the tank commanders changed the type of ammunition (to minimize the possibility of injury), Budanov and Fedorov became incensed, and proceeded to beat this lieutenant and throw him into a pit designed for Chechen POWs.

14 Around midnight that same day, Budanov rousted the duty crew and ordered them to proceed with him in an APC into the village of Tangi Chu. According to Budanov’s testimony, he had received reports earlier that there was a female sniper living in the Kungayev home and he went to question her. Like much of Budanov’s testimony, why he had to seize and interrogate the girl/female sniper at midnight was not altogether clear. Reaching the Kungayev home, the soldiers broke in and Budanov ordered his men to seize the girl, who then forced her into the vehicle and returned to his encampment. He then ordered the crew to vacate the vehicle, as he wanted to ‘interrogate’ the girl alone. Subsequent testimony revealed that Budanov turned on loud music and then spent the next hour and a half ‘questioning’ the suspect.

15 The next chapter again depends on who is telling the story. According to Budanov, the “vicious Chechen sniper” became aggressive during the questioning, and tried to reach for his weapon. In the struggle, Budanov lost his temper (having lost a number of men during the previous six weeks, Budanov claimed had increased his desire for revenge), and in a moment of madness, strangled her to death. After the murder, he ordered some soldiers to remove and bury the body, warning them to say nothing.

16 A more plausible version (corroborated by family members, other villagers, and the initial testimony of some of Budanov’s subordinates) is that Budanov had seen the girl during an earlier reconnaissance mission, and on the night of the crime, in his half-drunken state, decided to satisfy other desires. Budanov knew where the girl lived, and under the pretext that she was a possible sniper, kidnapped, raped, and then murdered the young Chechen<sup>13</sup>.

## After the crime

17 While the background and the crime itself reveal much about the conduct of the war in Chechnya, the story of what happened immediately after the crime was reported is equally, if not more troubling. That the story was even revealed to the press had less to do with military transparency and more to do with intrepid reporters, aggrieved parents, and a partially dysfunctional Russian military leadership<sup>14</sup>.

18 From published reports and testimony from the trial, the Kungayev parents learned of the death of their daughter while searching for her the following morning (27 March 2000). They in turn registered a complaint with the acting commander of the North Caucasus Military District, West Group of Troops, Lieutenant General Valeriy Gerasimov, who along with the commandant of the military facility at Urus-Martan, Major General Alexander Verbitsky, began an investigation<sup>15</sup>. From a description provided by relatives of the family, the two generals immediately traveled to the location where Budanov’s 160<sup>th</sup> Tank Regiment was located and questioned the colonel. What exactly occurred during this initial questioning is not clear. There were reports that men in Budanov’s unit threatened and attempted to detain these generals, while other reports insist that to avoid arrest, Budanov threatened suicide and shot himself in the foot. Regardless, the slightly injured Budanov was detained and moved first to a holding facility in Vladikavkaz and then on to a military detention cell in Rostov-on-Don<sup>16</sup>.

19 Just after Budanov’s crime was revealed in the press, there were published reports, which suggested that Chechen forces would be willing to exchange Russian-held prisoners for Budanov<sup>17</sup>. There had been confirmed reports of earlier exchanges (where captured Chechens had been exchanged for Russians), but the Russian prosecutor officially announced that the Russian side would never even entertain such a proposal<sup>18</sup>. The Chechens proceeded to execute these prisoners when their demands were not met. Many of the early press reports stated that Budanov had raped Kungayeva before murdering her<sup>19</sup>. The rape charge was particularly galling for the Chechens, where a young woman’s honor and chastity are held in the highest regard. However, by the time the case finally reached a Russian court almost one year later, the rape charge has been dropped and the medical evidence had disappeared<sup>20</sup>.

20 The flurry of press reports that were published in the interim between Budanov’s arrest and the first trial (March 2000- March 2001) can be roughly divided into two categories: those who sympathized with Budanov and those who argued that, regardless of circumstances, such criminal activity must be severely punished. The former far outweighed the latter (at least in the Russian press). Apologists for Budanov stressed the allegation that Kungayeva had been a sniper; that given the nature of this insurgency, there was no way to distinguish friend from foe; that Budanov’s unit had lost a number of soldiers to snipers in the past three months; that the Chechens had been guilty of far greater crimes that had gone unpunished; and that Budanov had distinguished himself in earlier combat. The pro-Budanov reports pointed out that given the stress that Budanov had been under for the previous six months, such excesses were bound to happen. His supporters denied the rape allegation and some of the other sordid details regarding soldier harassment that surrounded the crime.

21 While there were a few high-level military and political officials who openly expressed their indignation at such behavior, many, including the new Russian President, remained silent (at

least domestically; in front of international organizations, Putin would point to the Budanov arrest as proof of Russia's commitment to justice and human rights). Chief of Staff of the Russian Armed Forces, General Anatoliy Kvashnin's strong rebuke was almost immediately interpreted as proof of a power struggle among the military elite. Kvashnin said in an interview with a television program that the incident was a "wild, ignominious thing for the army, an 'extraordinary case' and that this regiment commander has in fact become a bandit; such scum must be rooted out from our collective"<sup>21</sup>. However, many other senior military officers serving in Chechnya came to the defense of the accused. Some went beyond affirming that the Chechen woman was likely a sniper and Budanov was justified in killing her, and suggested that the military would use this case as a litmus test for determining the patriotism of political leaders<sup>22</sup>. Most of those who argued that this crime deserved punishment were either Chechens or the shrinking pool of liberal journalists and representatives of various human rights organizations. The case was scheduled to be tried in the city of Rostov-on-Don, located some 200 miles north of Chechnya. Not only were the headquarters for the North Caucasus Military District located in the city, but it also contained "the main military hospital, through which thousands of Russian soldiers crippled and wounded in Chechnya had passed"<sup>23</sup>. There were demonstrations outside of the courthouse in support of Budanov almost the entire length of the legal process, and the venue could hardly be considered as neutral.

While arrested in March 2000, the trial did not initially convene until March 2001. There were a number of other factors which delayed Budanov's initial trial, chief of which was a general reluctance on the part of the military to prosecute this case. The Russian military was still engaged in a vicious struggle against the Chechen separatist fighters, and there was no urgency to prosecute a senior military officer for the death of a single Chechen. The process was further hampered by the general disorder that reigned among Russian forces in Chechnya at the time and the difficulties in obtaining evidence. Pressure from human rights groups, a handful of Russian and western journalists, and the nascent pro-Kremlin Chechen government forced the military to at least go through the motions of a trial.

By the time Budanov's first trial would convene (March, 2001), the tide on Russian press freedoms had already begun to turn. One of the few real reforms during the decade of Yeltsin's Russia, had been a free and relatively open press. Indeed, the lack of Russian support during the Chechen war of 1994-1996 can be largely attributed to the uncensored reporting from the region. President Putin, however, had been chastised by the Russian press during the sinking and failed rescue of the submarine Kursk (August, 2000), and there had been a concerted effort to bring the national news back under Kremlin control. The Putin government was not going to be restrained by public considerations regarding the restoration of order in Chechnya. Press coverage since hostilities recommenced in September 1999 were characterized by censorship and restriction<sup>24</sup>. Those reporters or news organizations who dared to circumvent these restrictions were not allowed access, or in some cases, subject to severe forms of repression<sup>25</sup>.

The initial Kremlin response to this crime must also be measured against their overall policy in Chechnya. While then PM Putin had warned in the fall of 1999 that Russia would use all necessary means to eliminate the Chechen separatist threat, he soon realized that short of genocide, he would have to work with and support "Kremlin-friendly" Chechens if he wanted to convince them to remain part of the Russian Federation. By June 2000, the Kremlin had adopted a policy of "Chechenization", whereby financial and military support would be provided to those pro-Kremlin Chechen forces. Akhmad Kadyrov, a former Mufti and rebel, received the Kremlin mantle<sup>26</sup>. Bolstered by this economic and military support, the Kadyrov clan began to establish a semblance of control over much of the Chechen republic, and over many former Chechen warlords.

Thus, the Budanov crime and subsequent trials placed the Kremlin in a delicate situation regarding their Chechen allies. If Budanov was not found guilty, or even if he was declared insane at the time of the crime, an acquittal would weaken the pro-Kremlin Kadyrov clan in Grozny. At the same time, however, a guilty verdict would serve to incense those Russian nationalists (including many military personnel) upon whom Putin relied. The solution, albeit

temporary, was first to be found in continued legal delays and then in the realm of psychiatric testing.

27 Just as the Russian legal system had been seriously compromised during the communist period, where the law served the party's interests, so too, the field of psychiatry had been manipulated to better serve the state. Those who disagreed or dared to protest against soviet policies were found to be mentally deficient and subject to forced treatment and hospitalization. Remnants of this corrupt system survived alive after the collapse of the USSR. Once his trial began in March 2001, Budanov would go through a series of six mental evaluations over the next 2 ½ years, the findings of which would be changed depending on the prevailing political winds.

28 The first trial (March 2001-July 2002) could be safely characterized as a travesty of justice. Not only did the judge clearly favor Budanov and his attorney, but even the military prosecutor appeared to be intent on defending the accused. In May 2001, the new Russian Defense Minister expressed his sympathy for the accused, suggesting that such actions result from the stress of combat<sup>27</sup>. Among most Russians, particularly those living in the city where the trial took place, there was no sympathy for the Kungayev family or their lawyers. Not only did the court refuse to admit testimony of Chechen witnesses, but they also failed to provide means to allow those few Russian servicemen the opportunity to testify against Budanov. The Kungayev family was treated as though they were the ones responsible for the crime<sup>28</sup>.

29 The shockwaves from the events from 9-11 were certainly felt in Russia, and particularly with regard to U.S. criticism of Russia's heavy hand in Chechnya. Russia's move to crush separatist sympathies in Chechnya were deftly transformed by the Putin government into the larger Global War on Terror (GWOT)<sup>29</sup>. While never openly stated, a deal of sorts was worked out whereby Russia would agree to assist the U.S. in its fight against global terrorism, in exchange for silencing the rhetoric over indiscriminate Russian force in Chechnya. In what would become a tragic metamorphosis, those who argued for strict accountability for those charged with war crimes, would now be accused of sympathizing with terrorists.

30 In July 2002, the court reached a tentative verdict, finding Budanov guilty of exceeding his authority, but exonerating him of the murder charge, claiming that the psychiatric evidence "proved" that the accused was temporarily insane at the time of the murder. Moreover, as part of the anniversary of the Great Patriotic War, the Russian prosecutor requested that the 3-year prison sentence recommended for Budanov be pardoned. As in previous announcements by the Russian prosecutor, the court was sending up a trial balloon to see how news of such a verdict would play in the larger Russian, Chechen, and western societies. Not surprisingly, the Chechen authorities were outraged at the verdict, and equally unsurprising, higher military officials found fault with the lower courts findings, and ordered additional psychiatric tests<sup>30</sup>.

31 The Chechen authorities were openly indignant that a colonel in command of a Russian tank regiment could be found 'temporarily insane,' and they may have also applied pressure in a more insidious way. When Budanov was transferred back to the Moscow's Serbskiy Mental Institute in August 2002 for a third round of testing, some of the psychiatrists apparently refused to test him for fear of Chechen reprisal<sup>31</sup>. These fears of extra-judicial Chechen punishment were also considerations during the final trial phase and subsequent imprisonment. If Budanov was not found guilty (or given a very light sentence), there was a very good chance that he or his family would be victims of Chechen revenge. This fear of Chechen reprisal has remained a consideration even today<sup>32</sup>.

32 Nor were the Chechens the only outside party monitoring the results of this trial. Human rights groups (both within Russia and abroad), European and U.S. governmental agencies, as well as western news agencies followed the conduct of the trial. As the only relatively senior officer to be tried for a war crime during the Chechen campaign, in a very real sense, this trial came to exemplify not only Russia's conduct of "anti-terrorist operations" in Chechnya, but in a larger sense, the very nature of justice within Russia. While the majority of Russian senior political and military officials were certainly inclined to forgive Budanov's excessive zeal in interrogating this Chechen woman, they were wary of what message such leniency would send to the West<sup>33</sup>.

33 In early December 2002, access and publicity surrounding the trial became restricted, purportedly to protect the confidentiality of Budanov's medical records<sup>34</sup>. The Kungayev family requested that the records be translated into Chechen, and for a detailed explanation as to the central finding of "transient situational insanity." This was the psychiatry-speak as to why Budanov had murdered their daughter<sup>35</sup>. A translation was not going to help, and with no explanation, on 31 December 2002 (likely hoping that the story would not get much press over the holiday), Budanov was acquitted of the murder charges, with the court ordering "compulsory psychiatric treatment"<sup>36</sup>.

34 Not surprising, the pro-Kremlin leadership in Grozny was outraged, and they began to express doubts of the utility of the upcoming referendum designed to cement their belonging to the Russian Federation<sup>37</sup>. Lawyers for the Kungayev family appealed the acquittal, and again, human rights groups and liberal politicians (both in Russia and abroad) demanded a retrial. In late February 2003, the Russian Supreme Court overruled the decision of the North Caucasus Court and announced that the case would be heard by a new judge. The next month (March, 2003), when 96% of the Chechens voted in the above referendum to remain an inseparable part of Russia, there would have to be a new verdict<sup>38</sup>.

35 Thus by the time the trial reconvened in March 2003, the proceedings had became something of a show-trial, or in Russian, a "*pokazukha*" (dog and pony show) to satisfy the authorities. There was now a marked change in Budanov's courtroom behavior, as though he now understood that a guilty verdict had to be found<sup>39</sup>. For the first time since the trial began, testimony revealed that the Commanding General of the 58<sup>th</sup> Army, Lieutenant-General Valery Gerasimov, had testified earlier that there had been no intelligence regarding a female sniper in Tangi Chu, and that he had specifically ordered units not to conduct raids within populated areas<sup>40</sup>. And also for the first time, the judge allowed Chechen witnesses to testify on behalf of the Kungayev family, who claimed that Budanov had been in the village during the previous week, where he had purportedly seen Miss Kungayeva.

36 The trial and deliberations continued for the next five months, during which lawyers for the Kungayev family attempted to prove that their deceased daughter had no connection whatsoever to the Chechen insurgency. Testimony from family and friends regarding the murdered girl revealed that she was a shy, conscientious daughter, who was apolitical and knew very little Russian. Budanov's claim that he had been given a photo of the suspect by a Chechen informer prior to the interrogation was refuted<sup>41</sup>. Despite the continued protests outside of the courtroom calling for Budanov's release, the accused understood that his defense was falling apart. In June 2003, Budanov's wife and sister took the stand, and rather than accusing the deceased of being a sniper as they had done earlier, now claimed that the stress of prolonged combat had unhinged their loved one<sup>42</sup>.

37 On 25 July 2003, the court finally reached a verdict:

10 years imprisonment in a high security facility for murdering Elza Kungayeva. It declared him mentally fit and stripped him of the rank of colonel and of his Order of Courage. Budanov was declared guilty of all charges brought against him - abuse of power, abduction and murder. As his abuses of power had been numerous the court deemed them an aggravating circumstance. Among extenuating circumstances the court named the defendant's physical condition, the fact that Budanov is the father of two children and that he had regretted his deeds.<sup>43</sup>

38 On the surface at least, it appeared that justice had been served. For murdering a young Chechen girl, this Russian army colonel had been stripped of his rank and his awards for bravery and sentenced to ten years in a penal colony. But as in all things Russian, the truth was somewhat more complex and murky. Shortly after the verdict was announced, Budanov arranged (likely through military channels) that his prison sentence would be served in the Ulyanovsk region of Russia. Though this was neither the location of his unit or his home of record, Budanov knew that his former commander, Major General Vladimir Shamanov, now served as governor of this region. Having a friend in high places would perhaps provide him with more comfortable prison conditions and allow Budanov to apply for parole after

serving a fraction of the sentence. Indeed, in September 2004, just shortly after the horror of the Beslan school siege, Budanov applied for pardon. Again, the uproar this request caused among Chechens and human rights organizations resulted in the request being denied<sup>44</sup>.

39 When in August 2007, Budanov again applied for pardon, a couple of different Russian journalists attempted to determine whether or not Budanov was still actually in prison. Their results were inconclusive, though it would appear that Budanov was still behind bars<sup>45</sup>. He was finally released from prison, one year before his term expired, in January 2009, having been confined for 8 years and 10 months.

40 On 10 June 2011, on a sunny Friday afternoon in central Moscow, an unknown assailant shot the former Russian Colonel, Yuri Budanov four times in the head, killing him immediately. The assailant escaped in a car (which was later recovered with the weapon). Budanov's dead body lay on the sidewalk for nearly three hours until a mine-detection team could determine whether the corpse had been booby-trapped. The body was finally hauled away after sappers could find no trace of nearby explosives. The search for those responsible for this murder continues. Budanov was buried with full military honors on 13 June 2011, in a cemetery located in Khimki (NW Moscow).

## Conclusion

41 Prior to his involvement in Chechnya, there was every indicator that Colonel Budanov was an exemplary Russian officer (married, with two children, awarded with Russia's highest military honor, and promoted below the zone to colonel). Besides his defense that his unit had suffered serious losses prior to this crime, during the testimony in the trial it was revealed that Budanov had suffered from a number of concussions, and that he had displayed worrying signs of mental instability. These mitigating factors, however, were nothing compared to the larger political gains by finding him guilty. His conviction was used by Kremlin authorities to demonstrate that they too understood concepts like "human rights", "justice", and "laws of war". During the three-year long investigation and trials, Russian political leaders (depending upon their immediate short-term needs), were able to exploit this case to either satisfy nationalist sentiment or appease international observers and the small liberal opposition within Russia. The trials and conviction were also used by the satraps in Grozny to prove that they were not mere Russian puppets, and that as an integral part of Russia, the Chechen people could expect justice in a Russian court of law.

42 Yuri Budanov is now dead, and some maintain that a rough sort of justice has been served. The four shots that killed him would appear to contradict the not-so ancient belief that 'laws are silent in time of war.' But it would be a grave mistake to equate Budanov's street-style execution with any sort of legal procedure. Admittedly, Budanov committed a serious crime during Russian combat operations in Chechnya. That he murdered Elza Kungayeva, there is no doubt, and perhaps, at times, he felt repentant<sup>46</sup>. Alongside any sorrow for his crime, however, there was likely indignation at being made the scapegoat for many of the horrors inflicted by Russian forces upon the Chechen people during the past decade. His anger was ultimately directed more at those that sent him to perform an ill-defined mission in Chechnya than at the Chechen people.

43 The Budanov case has come to symbolize much of Russia's painful military involvement in Chechnya over the past decade. At a deeper level, the case represents that dangerous ambiguous area between civilization and barbarity, legal systems and raw power, peace and war. While terms like "counter-terrorism" or "counter-insurgency" may appear precise and well-defined, they are actually shrouded in the grey fog of war. While imperfect and flawed, the very process of holding an individual responsible for his actions in this murky area is a step in the right direction.

### Notes

1 In some reports, her name is listed as *Kheda* Kungayeva. In Russian, the « a » is added to the last name to indicate female gender. Elza/Kheda was a member of the Kungayev family. When first arrested,

Russian news reports included the charge of rape in the crimes committed by Budanov. As the process moved through the military courts, however, this charge was removed. For a brief review of the initial reports, see: A. Yurkin, "Russian Commander Questioned in Rape, Murder Case", *Itar-Tass*, 30 March 2000; "Chechens Aimed to Use OMON Captives as Provocation", *Itar-Tass*, 3 April 2000. In this report it clearly states that Budanov "was recently arrested by the Military Prosecutor's Office (on charges of rape and murder)". For more specific details about preceded this crime, see: B. Akhmedkhanov, "Dress Coat without Honor", *Obshchaia Gazeta*, 6 April 2000. This report claims that Budanov was just one of many soldiers who raped Kungayeva. One day later (7 April 2000), and the military is having problems corroborating the rape charge. A. Shashkov, "Russian Officer's Rape Victim Was Chechen 'Sniper'", *Itar-Tass*, 7 April 2000. By 8 April 2000, the rape allegation had disappeared and now Budanov was only formally charged with murder. See, for instance: "Military Deny Detained Colonel Raped Chechen Woman Sniper", *Itar-Tass*, 8 April 2000. By the time the initial trial is about to begin nearly one year later, the rape charge has completely disappeared. See: "Russian colonel accused of Chechen girl's murder sent for trial", *RIA Novosti*, 7 February 2001.

2 This paper relied totally upon open source material published in the Russian and western press. In an effort to maintain some semblance of objectivity, no effort was made to contact either the Kungayev family or Colonel Budanov.

3 On public opinion's perception of this case, see: A. Regamey, "La 6e compagnie : les interprétations d'une défaite russe en Tchétchénie [The 6th Company: debates around a Russian military defeat in Chechnya]", *The Journal of Power Institutions in Post-Soviet Societies*, # 6/7, 2007, accessible at: <http://pipss.revues.org/index913.html> [Editor's note].

4 For good historical background on the Chechen conflict through 1996, see A. Lieven, *Chechnya, Tombstone of Russian Power*, New Haven, Yale University Press, 1998, p. 306.

5 For instance, Defense Minister, General Pavel Grachev, famously bragged in November 1994, that he could capture Grozny in two hours with one airborne regiment. See J. Russell, *Chechnya-Russia's War on Terror*, New York, Routledge, 2007, p. 33.

6 The reasons for the Russian military defeat during the 1994-1996 operation in Chechnya are manifold. Besides not being trained to fight an insurgent-type operation, the Russian military had been subject to the same economic and social collapse as the larger Russian society. While there were still many dedicated, professional officers, the Russian military was plagued by a host of other social and economic problems (hazing, housing and equipment shortages, pay delays, poor medical care etc...). Rampant inflation forced even senior officers to look for alternate sources of income. Having removed the communist party's commissar role, corruption flourished within the military.

7 The chief negotiator on the Russian side was General Alexander Lebed. While regarded by many as a Russian patriot, there were also many, both in and out of uniform (particularly those in the Internal Forces or MVD), who regarded him as a traitor.

8 There are a number of published reports that suggest that the Russian special services may have played a role in these explosions. See for instance, D. Satter, "The Shadow of Ryazan: Who was Behind the Strange Apartment Bombings in September 1999?", The Hudson Institute, 19 April 2002.

9 There were published reports that it took at least a month for the Kremlin to assemble and equip a fighting force to confront the Chechens who had invaded Dagestan, and that the bulk of the fighting was handled by Dagestani irregular forces. See L. Aron, "Jihadi Murat", *The New Republic*, 5 November, 2007.

10 J. Hughes, *Chechnya, From Nationalism to Jihad*, Philadelphia, University of Pennsylvania Press, 2007, p. 112.

11 Finding reliable statistics regarding either Russian or Chechen casualties from the past decade is a challenge. While the Russian authorities have claimed bias, the most thorough reports can be found within the Human Rights Center Memorial in Russia (<http://www.memo.ru>) and Human Rights Watch (<http://www.hrw.org>). For specific data on losses in Budanov's unit prior to the crime, see: B. Akhmedkhanov, "Dress Coat without Honor", *Obshchaia Gazeta*, 6 April 2000, pp. 1-2. Even these figures, however, may be imprecise. As Budanov's case moved through the various trials, the number of casualties that his unit took prior to the murder of Kungayeva continued to rise.

12 In one of those strange (and perhaps ominous) historical coincidences, the crime occurred on the very day that then Prime Minister, Vladimir Putin was elected as Russia's second democratically elected president.

13 To reiterate, the command climate in Chechnya among Russian forces at the time made this type of violence the rule rather than the exception, and the actions of Colonel Budanov were not out of character, either on a personal or on the wider, military level. While Chechen fighters were equally ruthless, there is no end to the list of human rights abuses committed by the much larger Russian forces in Chechnya (kidnapping, torture, murder, extortion, wanton destruction etc...). Budanov had a reputation of being a no-nonsense, aggressive commander, and had not only been promoted below the zone but had also been

awarded twice for his personal bravery. There were earlier reports of his erratic and violent behavior, that under normal circumstances, should have been cause for his removal from command. While the rape charge would be later dropped (for the lack of missing forensic evidence), the abduction and murder of this young Chechen is exceptional only because it was actually investigated, prosecuted, and for the subsequent furor it caused. It was not, by any means, an isolated instance.

14 As mentioned earlier, media coverage surrounding the fighting in Chechnya had fallen under increasing Kremlin/military control. Reporters were limited in their movement, and those that dared to get close to the front lines were threatened, more often by Russian military officials than Chechen fighters. One month prior to this incident, a reporter for Radio Free Europe had been detained by Russian forces. See: <http://www.cpj.org/news/2000/Russia06oct00na.html>. Accessed 21 July 2010. While presidential candidate Putin's trip to Grozny on 22 March 2000 received wide press coverage, the Russian military had taken active measures to restrict the open type of reporting that had been a hallmark of the first Chechen war. For a good synopsis of measures taken by the Russian government to limit press freedom, see: <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrpage=37&ccrcountry=166>. Accessed 21 July 2010.

15 For the victim's family, it was fortunate that General Gerasimov initiated the investigation. Allegations were subsequently made that had the former commander (General Vladimir Shamanov-also charged with criminal offenses by human rights groups) still been in charge, the investigation would have been 'lost.'

16 Again, there is no shortage of (conspiracy) theories as to why Budanov was arrested. Some claim that Budanov was merely being used as a pawn by senior officers in a battle for higher office. See, for instance: E. Krutikov, "A SCAPEGOAT: A colonel is left paying the bill for the civil war", *Izvestia*, 31 March 2000, p. 1. A more likely explanation is that the acting commander of the military district, Lieutenant General Gerasimov, was not aware of the rules of the game and felt compelled by the Chechens to take some action. As military units proceeded to secure/cleanse Chechen villages of insurgents, the commanders of these units would often bargain with village leaders to extort money/supplies in exchange for not destroying property. Conflict among the various Russian forces fighting in Chechnya occurred when one Russian military unit "trespassed" on the village/town of another Russian unit. These splits were further aggravated by the different types of Russian forces fighting in Chechnya. Besides regular army units, there were units from the MVD (Ministry of Internal Affairs), FSB (Federal Security Forces), Naval Forces, Border Guards, various special forces (OMON, Spetsnatz) and regular Russian police forces. Being poorly supplied and poorly paid by the federal government, these units were in competition in the various schemes to extort money from the locals.

17 "Riot Police Captured by Chechens Said Executed", *Interfax*, 4 April 2000.

18 See, for instance: <http://www.watchdog.cz/index.php?show=000000-000008-000001-000027&lang=1>. Accessed 21 July 2010. These exchanges, as well as how both sides of the conflict used kidnapping as extortion, are also described by A. Polikovskaya, *The Dirty War*, London, Harvill Press, 2004.

19 See for instance: A. Yurkin, "Russian Commander Questioned in Rape, Murder Case", *Itar-Tass*, 30 March 2000; "Chechens Aimed to Use OMON Captives as Provocation", *Itar-Tass*, 3 April 2000. In this report it clearly states that Budanov "was recently arrested by the Military Prosecutor's Office (on charges of rape and murder)". For more specific details about preceded this crime, see: B. Akhmedkhanov, "Dress Coat without Honor", *Obshchaia Gazeta*, 6 April 2000.

20 "Russian colonel accused of Chechen girl's murder sent for trial", Moscow RIA, 7 February 2001.

21 "Russian regimental commander killed woman in Chechnya", *Itar-Tass Weekly News* 30 March 2000.

22 This quote from Lieutenant General Shamanov is indicative of the sentiment among many senior Army leaders: "I can only say one thing: Colonel Budanov was one of the best commanders when he was under my control. His regiment accomplished a very difficult task to contain Basayev and Khattab's elite rabble, which had prepared a concentrated strike from behind our troops against the Novye Atagi-Grozny route. Things got down to hand-to-hand fighting, in which Budanov participated, incidentally. So I told Yuriy's mother that there was no need for her to be ashamed of her son and I say to his foes, 'Do not touch the face of a Russian soldier and officer with your dirty paws. If you can do better, then go on! But Russia will not allow you to sit there with your legs dangling and cynically call your army names. I do not think it will allow it even today'". See: "Ulyanovsk Candidate Lieutenant General Shamanov Mulls Chechnya", *Moskovskie Novosti*, 7 November 2000, p.1.

23 A. Politkovskaia, *Putin's Russia; Life in a Failing Democracy*, New York, Henry Holt and Co., 2004, p. 57.

24 For more information about the state's control of communication network and information services at that time, see: E. Sieca-Kozlowski, « From controlling military information to controlling society: the political interests involved in the transformation of the military media

under Putin », *Small Wars & Insurgencies*, Volume 20, # 2, June 2009 , pp. 300-318(19) [Editor's note].

25 A. Politkovskaya and A. Babitsky (see footnote 13) are only two of the more prominent journalists who have suffered for their honest reporting from Chechnya. There have been a host of others. See for instance, the reports documented at the Russia Justice Initiative: <http://www.srji.org/en/chechnya/>.

26 See for instance, N. Hovsepyan, L. Tsukanova, "Chechnya and Russia. War and Peace", *New Times*, 1 September 2002, pp. 6-13.

27 "Russian Defense Minister sees mitigating circumstances in Budanov case", *Interfax*, 16 May 2001.

28 "Rostov-na-Donu: Russian Extremists Picket Trial of Col. Budanov", *Obshchaia Gazeta*, 8 March 2001.

29 In perspective, it is not surprising to learn that the first head of state to call Bush after the 9-11 attacks was Putin. While Putin may have expressed genuine sympathy for the victims, he also quickly understood the advantage Russia could gain in supporting the U.S. Not surprisingly, 10 days later, the Russians provide "solid proof" of bin Laden's involvement in Chechnya. See: D. Severnyy, "Chechnya Learns To Live By the Law", *Rossiiskaia Gazeta*, 21 September 2001, p. 13.

30 A. Stepanov, "Chechnya chief says Budanov committed crime, must be punished", *Itar-Tass*, 3 July 2002.

31 The Chechens are renowned for their adherence in fulfilling what can be termed the "blood-feud". For the specific instance where Russian psychiatrists refused to treat Budanov, see: "Russia: Psychiatrists refuse to examine Budanov", *Interfax*, 7 August 2002. For a more general background on this custom, see A. Visayeva, "Chechnya: Living with a Vengeance", available at: [http://iwpr.net/?p=crs&s=f&o=262150&apc\\_state=henh](http://iwpr.net/?p=crs&s=f&o=262150&apc_state=henh). Accessed 21 July 2010.

32 Part of my problem in gaining access to Budanov for this paper has been the utmost secrecy regarding his confinement. This secrecy is further elaborated on in the conclusion.

33 See, for instance, comments made by presidential aide for Putin, S. Yastrzhembsky, "Putin aide says Chechnya can be stabilized by transferring governance", *Interfax*, 17 July 2002.

34 "Trial of Russian colonel proceeding behind closed doors", *Interfax*, 19 December 2002.

35 "Lawyer Says Budanov Suffered From Brain Injury", *Interfax*, 31 December 2002.

36 "Russian Colonel Budanov not yet Sent for Compulsory Treatment", *Interfax*, 4 January 2003.

37 "Chechens Not Surprised by Budanov Verdict", *Interfax*, 31 December 2002.

38 G. Feifer, "Russian Officials Say Chechen Referendum Broadly Approves Constitution", *Radio Free Europe/Radio Liberty*, 24 March 2003. Available on-line at: <http://www.rferl.org/content/article/1102652.html>.

39 At one point, Budanov stuffed his ears with cotton so he would not have to listen to the testimony of family members of the deceased. On another occasion, he completely lost his temper and had to be removed from the courtroom. See "Budanov Attends Case Hearings With Ears Plugged With Cottonballs", *Interfax*, 7 May 2003.

40 "Former Russian Commander Says Budanov Had 'No Right' To Detain Chechens", *Itar-Tass*, 29 April 2003.

41 A. Politkovskaya, *Putin's Russia*, op. cit., p. 75.

42 "Budanov's Wife, Sister Testify", *Interfax*, 16 June 2003.

43 "Convicted Army Colonel Stripped of Rank", *Interfax*, 25 July 2003.

44 "Ulyanovsk Prosecutor Believes 'Inexpedient' To Pardon Colonel Budanov", *Interfax*, 20 September 2004.

45 The subject of this search was the focus of an hour-long radio program broadcast on Radio Svoboda on 21 August 2007, "Budanov rvetsia na sbobodu". According to the reporters, they were unable to specifically determine whether Budanov was still serving his sentence in Dmitrovgrad Penal Colony #3 and received ambiguous answers from prison and regional authorities. According to the sources I contacted in Moscow, they believe that he is still behind bars, and the confusion over his exact whereabouts is likely connected with keeping him safe from Chechen retribution. For an audio and printed version of this radio program (in Russian), see: <http://www.svobodanews.ru/Transcript/2007/08/21/20070821120027087.html>. Accessed 21 July 2010.

46 One of Russia's main television stations did a "sensational" program after Budanov was released from prison where he confessed to actually murdering the suspected sniper/terrorist. For a brief clip of this program, see: [http://video.mail.ru/mail/basja\\_cat94/5158/5260.html](http://video.mail.ru/mail/basja_cat94/5158/5260.html). Accessed 1 August 2010.

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## Abstract

In the study of war, certain images become symbolic. In Vietnam, it might have been the photo of the young child running naked from a napalm explosion on her village. In the Iraq war, the toppling of Saddam Hussein's statue in Baghdad. The trials of Russian Colonel, Yuri Budanov became the iconic event for many Russians when thinking about the most recent conflict with Chechnya (1999-2008). This paper will examine the trials surrounding the alleged war crimes of this Russian officer, the background to this crime, the course of the trials, and the political and social factors which affected the various verdicts. The article will also touch upon the dilemma involved with distinguishing combatants from non-combatants in a counter-insurgency operation.

**Keywords :** Armed Forces, Military Justice, Crimes against Civilians, Budanov, War Crime, Kungayeva, Putin

**Research Fields :** Political Science

**Countries :** Chechnya, Russia, Tangi Chu